

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CLARENCE MARABLE,

Plaintiff,

**SECOND AMENDED
COMPLAINT**

-against-

Jury Trial Demanded

THE CITY OF NEW YORK, UNDERCOVER POLICE
OFFICER No. 3572, UNDERCOVER POLICE OFFICER
No. C94, SERGEANT DWIGHT SMITH (SHIELD NO.
4019), OFFICER WARREN ROHAN (SHIELD NO.
2378), DETECTIVE CHARLES JAMES (SHIELD NO.
5815), DETECTIVE EDWARD SINCLAIR (SHIELD NO.
5116), POLICE OFFICER JAMES RIVERA (SHIELD
NO. 12095)

09 CV 1859 (RJD)(RER)

Defendants.

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PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff seeks relief for the violation of his rights secured by 42 U.S.C. § 1983, the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution, and the laws of the State of New York. This case arises from a March 6, 2008 incident in which members of the New York City Police Department (“NYPD”) subjected plaintiff to false arrest, excessive force, fabricated evidence, and malicious prosecution. Plaintiff seeks compensatory and punitive damages, declaratory relief, an award of costs and attorneys’ fees, and such other and further relief as the court deems just and proper.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by the aforesaid statutes and 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because defendant City of New York is subject to personal jurisdiction in the Eastern District of New York. Venue is also proper pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the acts in question in this lawsuit took place in this District.

PARTIES

4. Plaintiff is a resident of the State of New York, County of Kings.

5. The City of New York is a municipal corporation organized under the laws of the State of New York.

6. Undercover Police Officer No. 3572, Undercover Police Officer No. C94, Sergeant Dwight Smith, Officer Warren Rohan, Detective Charles James, Detective Edward Sinclair, and Police Officer James Rivera (collectively the “Officers”) are members of the NYPD who were involved in the arrest of plaintiff, and the events arising out of plaintiff’s arrest, on March 6, 2008. These officers are sued in their individual and official capacities.

STATEMENT OF FACTS

7. On March 6, 2008, at approximately 8:40 p.m., near the corner of Albany Street and Sterling Street, Brooklyn, New York, the Officers, working as a team, arrested plaintiff without cause and falsely charged him with assault in the second degree, assault in the third degree, petit larceny, resisting arrest, and harassment in the second degree.

8. Plaintiff was walking home from the store when he was told to stop by one of the defendant officers. One of the defendant officers then began searching plaintiff, placing his hands in plaintiff's pockets. When plaintiff objected to this intrusion he was placed in handcuffs, placed into an NYPD van and taken to the 77th precinct. At all relevant times, plaintiff was not involved in any criminal activity.

9. Plaintiff was subsequently taken inside the 77th Precinct for arrest processing and placed in a holding cell. Once at the precinct, plaintiff explained that he suffered from seizure disorder and was taken to the emergency room. After being examined, plaintiff was returned to the precinct around early Friday morning March 7, 2008.

10. In the course of, and subsequent to, his arrest, plaintiff was subjected to excessive force at the hands of the arresting officers. Plaintiff was handcuffed excessively and unnecessarily tight causing numbness to hands and dragged from the van when an officer pulled plaintiff by the handcuffs.

11. In the early evening of March 7, 2008 plaintiff was taken to Brooklyn Central Booking.

12. While plaintiff was in Central Booking, awaiting arraignment, one or more of the arresting officers met with a prosecutor employed by the Kings County District Attorney's Office.

13. The officer(s) misrepresented to the prosecutor that plaintiff had committed the crimes of assault in the second degree, assault in the third degree, petit larceny, resisting arrest, and harassment in the second degree

14. As a result of the aforesaid misrepresentation, felony charges were filed against plaintiff.

15. On March 8, 2008, at approximately 11:00 p.m. plaintiff was arraigned in criminal court and released on his own recognizance. On April 7, 2009, after numerous appearances, all charges against plaintiff were dismissed.

16. As a result of defendants' actions, plaintiff experienced physical injuries, emotional distress, fear, embarrassment, humiliation, discomfort, pain and suffering, loss of liberty, and damage to reputation.

**FEDERAL CLAIMS AGAINST
UNDERCOVER POLICE OFFICER NO. 3572,
UNDERCOVER POLICE OFFICER NO. C94,
SERGEANT DWIGHT SMITH, OFFICER
WARREN ROHAN, DETECTIVE CHARLES
JAMES, DETECTIVE EDWARD SINCLAIR,
POLICE OFFICER JAMES RIVERA**

17. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-16 as if fully set forth herein.

18. The conduct of the Officers, as described herein, amounted to false arrest, excessive force, fabricated evidence. This conduct violated plaintiff's rights under 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution.

**FEDERAL CLAIMS AGAINST THE CITY OF
NEW YORK**

19. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-18 as if fully set forth herein.

20. The City of New York directly caused the constitutional violations suffered by plaintiff.

21. Upon information and belief, the City of New York, at all relevant times herein, was aware from notices of claim, lawsuits, complaints filed with the City, and from the City's own observations, that the individual defendants are unfit, ill-tempered officers who have the propensity to commit the acts alleged herein. Nevertheless, the City of New York exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retrain, supervise, discipline, and monitor the officers and improperly retained and utilized them. Moreover, the City of New York failed to adequately investigate prior complaints against the officers.

22. The aforesaid conduct by the City of New York violated plaintiff's rights under 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution.

WHEREFORE, plaintiff demands a jury trial and the following relief jointly and severally against the defendants:

- a. Compensatory damages in an amount to be determined by a jury;
- b. Punitive damages in an amount to be determined by a jury;
- c. Costs, interest and attorney's fees;
- d. Such other and further relief as this Court may deem just and proper, including injunctive and declaratory relief.

DATED: May 21, 2010
New York, New York

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By:

/ss/
ROBERT MARINELLI (RM-4242)